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**AN OVERVIEW OF THE  
MARYLAND INSURANCE GUARANTY ASSOCIATION (MIGA)**

**Prepared by:  
Department of Fiscal Services  
January, 1986 (jml)**



## MARYLAND INSURANCE GUARANTY ASSOCIATION

### Background

In the late 1960's the National Association of Insurance Commissioners (NAIC) began a review of insurance laws to determine if there should be guaranty associations to insure claims of insolvent insurance companies. NAIC model legislation was developed for both property and casualty and life and health insurance. The Maryland Insurance Guaranty Association (MIGA) was created in 1971 (Chapter 703) for the property and casualty insurance. The Life and Health Insurance Guaranty Association (LHIGA) was also established in 1971 (Chapter 715) for life and health insurance. The majority of states have guaranty associations, however, each statute is different.

MIGA was established to accomplish three purposes: (1) to provide a mechanism for the payment of claims under certain insurance policies because of an insolvent insurer; (2) to assist in the detection and prevention of insurer insolvencies; and (3) to provide for the assessment of the cost of such payments and protection among insurers.

Initially, the Act applied to all types of direct insurance except for life, health, workmen's compensation, annuities, and the Motor Vehicle Security Fund. On July 1, 1975 all of the assets and obligations of the Motor Vehicle Security Fund were transferred to MIGA, and on July 1, 1981 all the assets and obligations of the Workmen's Compensation Insolvency Fund were transferred to MIGA. Currently MIGA covers all direct insurance except for life, health, and annuities and is funded with an annual assessment of all member insurers who write any type of insurance to which the MIGA law applies.

### Organization of MIGA

MIGA is a nonprofit unincorporated legal entity divided into six separate accounts:

1. Title insurance;
2. Surety insurance;
3. Wet marine and transportation insurance;
4. Motor vehicle insurance;
5. Workmen's compensation;
6. All other insurance (excluding life, health and annuities).

The members of MIGA are insurers licensed in the State of Maryland to transact insurance in the six areas listed above.

The MIGA law requires that a Plan of Operation be submitted to the Insurance Commissioner for approval. This plan shall include:

1. Procedures for implementing the MIGA law;
2. Procedures for handling assets;
3. Amount and method of reimbursement of Board members;
4. Procedures for filing claims;

5. Establishment of regular places and times for Board meetings;
6. Record keeping;
7. Appeals process; and
8. ~~Additional provisions.~~

A copy of the Plan of Operation is attached as Exhibit A.

#### Board Members

A Board of Directors is required to be appointed by the Insurance Commissioner. The Board shall consist of 5 to 9 persons from member insurers, serving terms as established in MIGA's Plan of Organization. The previous Insurance Commissioner appointed specific Board members from the member insurers. The current Insurance Commissioner appoints member insurers who then must provide the Board member. Board members may be reimbursed for expenses from the assets of MIGA (assessments on insurers); however, Board members have not requested this type of reimbursement to date. There are currently nine Board members, each serving six year terms, of which no more than four have terms expiring in one year. A list of the current Board of Directors is attached as Exhibit B

#### Meetings

An annual meeting is required on April 15th of each year to review the Plan of Operation, outstanding contracts, operating expenses and covered claim costs to determine assessments, and any other matter deemed appropriate. A meeting is also required after receiving notice of any insolvency of member insurers. Regular meetings are scheduled as appropriate and special meetings may be called by the Chairman of the Board or at the request of any two Board members. At such special meetings the Board may only consider those items contained in the notice and agenda of the special meeting. A written record of each Board meeting is required. In addition all meetings are taped although this is not required.

#### Reporting

The Board is required to submit to the Insurance Commissioner, by March 30th of each year, a financial report of the preceding year in a form approved by the Commissioner. An annual audit is also required and must be conducted in accordance with Generally Accepted Audit Standards.

#### Plan of Operation

The Plan of Operation includes a requirement that the Chairman of the Board shall contract with an Executive Officer to perform and supervise all functions imposed under the MIGA law and the Plan of Operation. The duties of the Executive Officer are to organize, supervise, and perform the duties through personnel operations in the following departments:

1. Administration;
2. Claims;

3. Legal; and
4. Detection and prevention of insolvencies.

The current Executive Director is Joseph R. Petr. There are ten full and part time personnel. The office originally had three employees and has grown over the years as the workload increased due to increased insolvent insurers. The address is 8505 Loch Raven Boulevard, Towson, Maryland 21204-6304, phone (301) 296-1620.

#### Investment of Funds

Prior to 1985 there had been approximately \$1,000,000 of assets in MIGA. Funds had been invested with the Equitable Bank in treasury bills and notes. During late 1984 Ideal Mutual Insurance Company was deemed insolvent and an assessment was made on the member insurers of approximately \$12,000,000. Given the large amount of cash available for investment at this time, an investment policy has been implemented which allows for 80% of the funds to be invested in treasury bills and notes and the remaining 20% to be invested in a money market with Equitable (capped at \$2,500,000).

#### Payment of Claims

##### Insolvent Insurer

An insolvent insurer, under the MIGA law, for which claims may be paid is:

1. licensed in the State of Maryland (may be domiciled in another State); and
2. in liquidation (receivership) after a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.

##### Covered Claim

A covered claim is an obligation, including unearned premiums, of an insolvent insurer which:

1. is for a Maryland resident;
2. remains unpaid;
3. is presented as a claim to the receiver;
4. is incurred prior to or within 30 days of the receivership; and
5. arises out of the specific types of insurance for which MIGA is established.

Covered claims do not include reinsurer, insurer, insurance pool, or underwriting associations.

### Claim Procedure

The first step in the claims procedure is for a member insurer to be deemed--insolvent. --The court appointed receiver in the state where the insolvent insurance company is domiciled collects all claim information and sends notice to the appropriate guaranty association in the affected states.

The MIGA law requires that any person having a claim which may be recovered from more than one guaranty association must first seek recovery from the association in the state where the insured resides except that a property claim must be first recovered from the association where the property is located. Non-duplication of benefits is also provided in that a recovery under the MIGA law shall be reduced by the amount of recovery from any other guaranty association.

Once all claims of an insolvent insurer are received by MIGA the claims are divided as to the applicable account and a cost estimation is determined of all the claims by the Executive Director of MIGA and appropriate claims personnel.

Assessments are made to all the member insurers writing insurance in the affected accounts and once collected the assessment is placed in a reserve account of MIGA from which to pay covered claims. All claims are not paid in one year and based on actual experience with several insolvencies it may take ten years or more to work out all the claims. If the cost estimate is inadequate to cover all the claims, an additional assessment is allowed. If the cost estimate is too high and excess funds are left after all claims are paid, the excess is to be returned on a prorated basis to those affected insurers.

### Assessment of Member Insurers

MIGA shall allocate the claims separately among the six accounts in amounts necessary to pay the obligations of an insolvency, the costs of examinations necessary to detect and prevent insolvencies, and other expenses of MIGA. The assessments shall be based on the net direct written premiums of the member insurer for the preceding calendar year on the types of insurance in the applicable account. No member insurer may be assessed in any year on an account in an amount greater than 2% of that member's net direct written premiums for the preceding calendar year. If the maximum assessment is not adequate to handle all the claims of an insolvency in that account, additional assessments for the insolvency will be made in future years until the obligation is paid. Copies of the assessment letter from MIGA for the Eastern Indemnity Company of Maryland and the Ideal Mutual Insurance Company insolvencies are attached as Exhibit C.

### Insolvencies

#### Carrier Insurance Company (Insolvency Date - 1986)

Eastern Indemnity (Insolvency Date - 1985)

Surety

Claims Paid - \$ 0  
Open Claims - (0)  
Assessments - \$559,889 (Maximum for One Year)

Excalibur Insurance Company (Insolvency Date 1985)

Motor Vehicle and Workmen's Compensation

Claims Paid - \$24,328 (1)  
Open Claims - \$20,200 (2)  
Assessment - \$ 0

Ideal Mutual Insurance Company (Insolvency Date - 1985)

Motor Vehicle, Workmen's Compensation, and Other

Claims Paid - \$79,859 (17)  
Open Claims - \$ 9,920,141 (688)  
Assessments - \$11,869,552

S & H Insurance Company (Insolvency Date - 1985)

Motor Vehicle and Other

Claims Paid - \$0 (0)  
Open Claims - \$0 (371)  
Assessments - \$0

Security Casualty Insurance Company (Insolvency Date - 1982)

Motor Vehicle

Claims Paid - \$4,793 (54)  
Open Claims - (0)  
Assessments - \$ 0

Proprietors Insurance Company (Insolvency Date - 1981)

Other

Claims Paid - \$143,599 (489)  
Open Claims - \$ 13,796 (37)  
Assessments - \$749,994

American Reserve Insurance Company (Insolvency Date - 1979)

Motor Vehicle

Claims Paid - \$1,986  
Open Claims - (0)  
Assessments - \$ 0

Consolidated Mutual Insurance Company (Insolvency Date - 1979)

Other

Claims Paid - \$27,500 (7)  
Open Claims - (0)  
Assessments - \$ 0

Consolidated Mutual Workers Compensation (Insolvency Date - 1979)

Workmen's Compensation

Claims Paid -- \$54,659 (1)  
Open Claims - \$13,200 (1)  
Assessments - \$50,003

Reserve Insurance Company (Insolvency Date - 1979)

Motor Vehicle and Other

Claims Paid - \$328,880 (312)  
Open Claims - (0)  
Assessments - \$649,008

Maryland Indemnity Insurance Company (Insolvency Date - 1977)

Surety and Other

Claims Paid - \$476,400 (131)  
Open Claims - (0)  
Assessments - \$665,097

Maryland Indemnity Workers Compensation (Insolvency Date - 1977)

Workmen's Compensation

Claims Paid - \$347,968 (42)  
Open Claims - \$287,500 (9)  
Assessments - \$ 0

Interstate Insurance Company (Insolvency Date - 1976)

Wet Marine and Transportation

Claims Paid - \$56,524 (3)  
Open Claims - (0)  
Assessments - \$67,895

Motor Vehicle Insurance Account (Transferred to MIGA 1975)

Motor Vehicle

Claims Paid - \$1,145,544 (1738)  
Open Claims - \$ 56,050 (5)  
Assessments - \$ 0

This data is as of September 30, 1985. Final reports for CY 1985 will be available in February 1986.

**Financial Status**

The financial statement of MIGA as of September 30, 1985 show a total negative equity of \$3,506,816. Adequate assessments for the Eastern Indemnity Company of Maryland insolvency, a surety company, are not possible at the current time given the estimated claims of \$6,000,000 and the maximum annual assessment of \$560,000 based on a \$28,170,790 premium base for surety insurance. The financial statement of MIGA as of September 30, 1985 is available as Exhibit D.



## Regulation

Under current law MIGA is regulated by both the Board of Directors, which are member insurers, and the Insurance Commissioner. This is industry regulation but it is different than most in that MIGA is a guaranty association and the funds available through the assessments are paid by the member insurers who are represented on the Board. The Board would have a direct interest in providing adequate, not excessive assessments.

The Insurance Commissioner is responsible for the appointment of the Board members, notification to MIGA of insolvencies, and preparation of a statement of the net direct written premiums of each member insurer. The Insurance Commissioner may require MIGA to notify the insureds of an insolvent insurer, suspend or revoke the license of an insurance company which fails to pay the assessment and revoke the designation of a servicing facility if claims are being handled unsatisfactorily.

## State Obligations

The State does not directly guarantee any of the obligations of MIGA. A 1983 Court of Special Appeals decision did find that the degree of control exercised by the State over MIGA's operation indicates that MIGA is an agency or instrumentality of the State within the scope of the Public Information Act (the opinion is attached as Exhibit E).

## 1986 Legislation

Insurance which guarantees the performance of contracts, by guaranteeing and executing bonds, undertakings and contracts of suretyship is different from any other type of property and casualty insurance. The present MIGA law does not account for the unique nature of surety bonds so that MIGA is finding it particularly difficult to fulfill its statutory function for claimants of the Eastern Indemnity Company of Maryland, an insolvent Maryland domestic insurance company which primarily engaged in the surety bond business. Because of a combination of the 2% maximum assessment and the relatively low premium base for surety insurance written in Maryland, it may take years for MIGA to assess sufficient funds to pay surety claimants. Payment on a current basis becomes impossible.

The Finance and Economic Matters Committee have introduced legislation during the 1986 Session of the General Assembly which amends the MIGA law with respect to surety bonds and a ceiling on payment of covered claims. First, the bills place a \$300,000 limit on each covered claim with a ceiling on MIGA's aggregate liability of \$1,000,000 under any one surety bond. These provisions serve to limit the ultimate exposure of MIGA at a level which will satisfy the need of the overwhelming number of consumers. Second, the bills reduce the number of accounts from six to four, deleting the accounts of surety insurance and wet marine and transportation insurance, thus enlarging the aggregate premium base against which the assessments may be made. This change will permit larger assessments against insurers so that covered claims incident to the Eastern Indemnity Company of Maryland insolvency may be paid in a timely fashion. Additional information is available in the fiscal note to Senate Bill 377 which is attached as Exhibit F.



MARYLAND INSURANCE GUARANTY ASSOCIATION

PLAN OF OPERATION

Article I. Plan of Operation.

This plan of operations as specified under Section 509, hereinafter referred to as the Plan, shall become effective upon written approval of the Commissioner of Insurance of the State of Maryland, hereinafter referred to as the Commissioner. All section references herein shall be to sections of the Maryland Insurance Code.

Article II. Board of Directors.

- A. 1. The Board of Directors shall consist of nine persons, appointed by the Commissioner from member insurers so as to fairly represent all member insurers. The Board shall elect a Chairman from its members, and establish an Executive Committee of three from its members. The Board may elect officers from its members.
2. New appointments and/or extensions of existing appointments shall be made for terms not exceeding six years and so arranged that no more than four Directors will have terms expiring in any one year.
3. Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board of Directors.

- B. A majority of the Board shall constitute a quorum for the transaction of business and the acts of a majority of the Board present at a meeting at which a quorum is present shall be the acts of the Board. Each Board member shall be entitled to one vote and shall be permitted to vote by proxy, using the Association's proxy form which appoints the Chairman of the Board, or the Acting Chairman, to vote as his proxy.
- C. The Board shall hold an Annual Meeting at the Association's office on April 15th of each year, unless the Board upon proper notice shall designate some other date or place.

At each annual meeting, the Board shall:

1. Review the Plan and submit any amendments it may deem appropriate. Such amendments shall be effective upon written approval of the Commissioner.
2. Review each outstanding contract with Servicing Facilities and make any necessary corrections, improvements or additions.
3. Review operating expenses and covered claims costs and determine if an assessment, or refund of a prior assessment would be appropriate and, if so, the amount thereof. The Board shall levy any such assessment or make any such refund in accordance with Section 508.
4. Review, consider and act on any other matters it may deem appropriate.

D. The Board shall hold a meeting promptly after receiving notice from the Commissioner of the insolvency of any member insurer. At such meeting or at any subsequent meeting the Board shall consider and decide:

1. What method or methods, as permitted under Section 508 shall be adopted to pay and discharge covered claims of the insolvent insurer, but in no event shall an insolvent insurer be appointed as a Servicing Facility. If the Board decides to contract with a Servicing Facility, the Board shall seek to secure the receiver's, liquidator's or statutory successor's participation in such contract to assist the Association in the performance of its legally imposed duties. The Association shall pursue all recoveries permitted to the insolvent insurer.
2. What immediate action, if any, should be taken to assure the proper retention of the records of the insolvent insurer necessary to the prompt, economical handling by the Association of the covered claims. In this effort the Board, or a designated Servicing Facility, shall work with the receiver, liquidator or statutory successor and seek his approval of having the Board, or a designated Servicing Facility, take direct physical control of that portion of the insolvent insurer's records deemed by the Board to be necessary for the discharge of its duties imposed by law.

3. What persons should be hired by the Association to implement and carry out the directives of the Board made pursuant to its statutorily imposed duties.
  4. To what extent and in what manner the Board shall review and contest settlements and releases or judgments, orders, decisions, verdicts and findings to which the insolvent insurer or its insureds were parties in accordance with Section 508(4).
  5. What assessment, if any, should be levied upon member insurers. If such assessment is determined to be necessary, the Board shall levy such assessment in accordance with Section 508(3).
  6. What steps, permitted by law, are deemed necessary to protect the Association's rights against the estate of the insolvent insurer.
  7. Any other matters it may deem appropriate.
- E. The Board may schedule such other regular meetings as it may deem appropriate. Special meetings of the Board may be called by the Chairman, and shall be called at the request of any two Board members. Not less than five (5) days written notice shall be given to each Board member of the time, place and purpose or purposes of any special meeting. Any Board member not present may consent in writing to

any specific action taken by the Board. Any action approved by a majority of Board members at ~~such~~ special meeting at which a quorum is present, including those consenting in writing, shall be as valid a Board action as though authorized at a regular meeting of the Board. At such special meeting the Board may consider only those purposes contained and specified in the notice and agenda of the special meeting.

Article III. Operations.

- A. The Chairman, shall, subject to the approval of the Executive Committee, enter into a lease agreement for office space necessary for the operation of the Association. Such office space shall be the official address of the Association.
- B. The Chairman, shall, subject to the approval of the Executive Committee, contract with an Executive Officer to perform and to supervise the execution of all functions as may be necessary in discharging duties imposed upon the Association under the Maryland Insurance Guaranty Association Act and the provisions of the Plan of Operation as amended from time to time.
  - 1. The Executive Officer shall be the Chief Operating Officer of the Association and shall organize, supervise and perform the Association's duties through personnel operating under a table of or-

ganizations as follows:

- (a) Administration Department
- (b) Claims Department
- (c) Legal Department
- (d) Detection and Prevention of Insolvencies  
Department

2. The Executive Officer shall, subject to the approval of the Executive Committee, contract with an Administrative Assistant, whose duties shall include the management of the Administration Department in the following functions:

- (a) The general management of the Association's office.
- (b) The handling and accounting for assets of the Association.
- (c) The recordation of meetings, transactions, and the presentation of required reports, and records in accordance with the provisions of this Act.

3. Claims Department. This Department shall be responsible for the investigation and adjustment of all covered claims and defense of lawsuits.

4. Legal Department. This Department shall perform those tasks generally accepted in the function of any corporate agency, and shall undertake the defense of those claims or lawsuits not resolved by the Claims Department, and in the performance of that duty, the Legal Officer shall have full authority to assign for



handling of claims or of litigated cases to assigned counselors, whose names are on the list of said attorneys approved by the Executive Committee.

5. The Executive Officer shall, subject to the approval of the Executive Committee, contract with a Detection and Prevention Assistant, whose duties shall be the management of the Detection and Prevention Department which function shall include the performance of those inquiries, investigations, surveys, and analytical studies necessary to the performance of the duties imposed upon the Association under Section 504 of Article 48A of the Maryland Code - namely, "To assist in the detection and prevention of insurer insolvencies"; and by Article 5, paragraph D of the Plan of Operation. The duties described under Sections 3 and 4 of Paragraph B above, may be performed by the Executive Officer.
- C. The Executive Officer shall, with the approval of the Executive Committee, employ such additional firms, persons, or corporations, as become necessary in the performance of said duties as described in paragraph B and as are otherwise imposed upon the Association. Such persons, firms or corporations, shall keep such records of their activities as may be required by the Executive Officer.
- D. The Board may open one or more bank accounts for use in Association business. Reasonable delegation of deposit and withdrawal authority to such accounts for Association

business may be made consistent with prudent fiscal policy.

- E. The Board may borrow money from any person or organization including a member insurer, or from an appointed Servicing Facility as the Board may deem appropriate.
- F. The Board may levy assessments to cover the reasonable costs of administering the Association, but no member insurer's assessment shall be less than ten dollars (\$10.00).

Article IV. Servicing Facilities.

The Board may contract with one or more persons, firms, or corporations to act as Servicing Facilities should the Board receive notice from the Commissioner of the insolvency of a member insurer. The designation of a Servicing Facility is subject to the approval of the Commissioner, but such designation may be declined by a member insurer. Such contract terms may include:

1. Terms of payment to the Servicing Facility.
2. Extent of authority delegated to the Servicing Facility.
3. Procedures for giving the receiver, liquidator, or statutory successor timely notice, sufficient to protect the Association's right of subrogation against him, of each and every covered claim not otherwise reported to him.
4. Procedures contemplated for the handling of covered claims as defined in the Maryland Insurance Guaranty

Association Act. These procedures shall include the right to request from or offer to any person arbitration of his covered claim.

5. Procedures for the printing or preparation of forms necessary for the proper handling of covered claims.
6. Requirement of bond for faithful performance.
7. Any other provisions deemed appropriate by the Board.

Article V. Records and Reports.

- A. A written record of the proceedings of each Board meeting shall be made. The original of this record shall be retained in the Association's office, with copies being furnished to each Board member.
- B. The Board shall submit to the Commissioner not later than March 30 of each year a Financial Report for the preceeding calendar year in a form approved by the Commissioner.
- C. After the appointment of a receiver, liquidator or statutory successor and the levy of an assessment by the Association, the Board shall, once every year, designate and engage the services of an actuarial expert who is a Public Accountant, Board Certified in Maryland. Such expert shall examine all the books and records of the Association. Such examination shall be made in accordance with generally accepted auditing standards and shall include such tests of accounting

records and other auditing procedures as may be necessary in the circumstances.

The Board shall also designate and engage the services of an expert in insurance claims. Such expert shall be a senior claims official with a member company (not a member of the Board) with a legal background. Said expert shall examine the books and records of the Claims Department, examine the manner in which claims are processed and paid and shall conduct any such other examination as may be expedient.

The Chairman, with the approval of the Executive Committee, shall appoint said experts to serve as an Auditing Committee. Said Auditing Committee shall report its findings to the Board.

- D. In order to effectuate the purposes set forth in Section 513 of the Act, "Detection and Prevention of Insolvencies", the Board shall develop procedures and devise forms for reporting any member who may be insolvent or in a financial condition hazardous to the policyholders or the public. No such reports shall be considered public documents. The Board also shall develop procedures and devise forms for reporting the "history and cause" of each insolvency processed, and shall maintain a continuing file of such reports.

Article VI. Membership.

- A. As a condition of authority to transact the business of insurance in this State any insurer licensed to write on a

direct basis any kind of insurance to which this Act applies shall be and remain a member of the Association.

Any member insurer whose Certificate of Authority has been terminated for whatever reason shall be liable for any assessment based on insolvencies occurring prior to such termination.

- B. Any member insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within thirty days after said action or decision.

Article VII. Indemnification.

- A. Any person described in Section 517 shall be indemnified by the Association against all expenses incurred in the defense of any action taken or not taken by him in the performance of his powers and duties under the Maryland Insurance Guaranty Association Act.
- B. This article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by Section 517.

Article VIII. Meeting of Member Insurers.

- A. Meeting of member insurers shall be called by the Chairman of the Board following a resolution by the Board of Directors. Calls for meetings shall be in writing and shall specify the time, place and object or objects thereof. Written notice shall be given to each member insurer by mailing same to its address as it appears on the records of the Association, at least ten and not more than sixty days before any such meetings; provided however, that no failure or irregularity of notice of any special meeting

shall invalidate the same or any proceedings thereat.

- B. A majority in number of all the members of the Association, in person or by proxy, shall be requisite to constitute a quorum at any meeting of the member insurers.
- C. Any member insurer entitled to vote at a meeting of member insurers may be represented and vote thereat by proxy.
- D. Each member insurer shall be entitled to one vote on any matter properly brought before the meeting.

Article IX. Conformity to Statute.

The Maryland Insurance Guaranty Association Act as written, and as may be amended, is incorporated as part of this Plan.

Article X. Claims Procedure.

The Board shall instruct its claims personnel and any designated servicing facilities handling claims to undertake the following procedures in the event that claims against an insolvent insurer are presented to the Association:

- A. Prompt determination shall be made upon information to be supplied by the claimant with respect to the existence of uninsured motorist coverage or any other insurance coverage which might be considered primary to any covered claim against the Association in accordance with the provisions of Section 512.
  - 1. If no such uninsured motorist or other insurance coverage exists, the Association shall promptly adjust said claim in accordance with its obligations under Section 508(a).
  - 2. If uninsured motorist or other insurance coverage within the scope of Section 512 exists, the Association

shall advise the claimant of the provisions of Section 512 and of his right to proceed against the Association for the excess portion of the covered claim, if any, after exhaustion of all rights under such uninsured motorist coverages or other insurance policies. The Association shall also advise the uninsured motorist carrier or other insurer affording such primary coverage to notify the Association promptly if any claim is in excess of the benefits provided under the policy of uninsured motorist or other insurance so that the Association may coordinate adjustment with the other insurer and may promptly adjust that portion of the excess which may be a covered claim in accordance with its obligations under Section 508(a).

- B. In the event that the Association denies payment of all or a portion of a claim which would otherwise be a covered claim for the reason that there exists uninsured motorist or other insurance coverage which is primary under Section 512, the Association shall request the other insurer to release any subrogation right it might have against the insured of the insolvent insurer except to the extent that such right constitutes a claim upon the receiver of the insolvent insurer.





## MARYLAND INSURANCE GUARANTY ASSOCIATION

## BOARD OF DIRECTORS

1 9 8 5

\* Stephen J. Bernhardt, President  
BALTIMORE EQUITABLE SOCIETY  
21 N. Eutaw Street  
Baltimore, Maryland 21201  
(301) 539-1072

Chairman - 8/82 - 8/88

James Keenan  
Vice Pres, Genl. Counsel & Corp. Secy  
FIDELITY AND DEPOSIT COMPANY  
210 N. Charles Street  
Baltimore, Maryland 21201  
(301) 539-0800, Ext. 202

Director - 4/15/84 - 4/15/87

\* August Alegi  
Vice Pres., Deputy General Counsel  
G E I C O  
GEICO Plaza  
Washington, D.C. 20076  
(202) 986-2657

Vice Chairman - 4/15/84 - 4/15/87

Keith Shoemaker, Asst. Treasurer  
U. S. F. & G.  
P. O. Box 1137  
Baltimore, Maryland 21203  
(301) 547-3000, Ext. 5526

Director - 4/15/85 - 4/15/87

\* Guy Johnson, Branch Manager  
AMICA MUTUAL INSURANCE COMPANY  
400 E. Pratt Street - 7th Floor  
Baltimore, Maryland 21202  
(301) 539-7027

Director - 4/15/85 - 4/15/89

Jack C. Miller  
Regional Controls & Service Manager  
NATIONWIDE MUTUAL INSURANCE COMPANY  
2500 Riva Road, S.E.  
Annapolis, Maryland 21401  
(301) 224-3200

Director - 4/15/84 - 4/15/87

Paul D. Horst, President & Treasurer  
BRETHREN MUTUAL INSURANCE COMPANY  
149 N. Edgewood Drive  
Hagerstown, Maryland 21740  
(301) 739-0950

Director - 6/30/82 - 6/30/88

William Bryan, Claims Manager  
MARYLAND CASUALTY COMPANY  
P. O. Box 1694  
Baltimore, Maryland 21203  
(301) 338-2600

Director - 8/28/82 - 8/28/88

K. Donovan Waskom, Regl. Vice Pres.  
STATE FARM MUTUAL AUTO INSURANCE CO.  
800 Oak Street  
Frederick, Maryland 21701  
(301) 662-5181

Director - 12/1/85 - 12/1/89

\* EXECUTIVE COMMITTEE



## MARYLAND INSURANCE GUARANTY ASSOCIATION

JOSEPH R. PETR  
EXECUTIVE DIRECTOR  
AND COUNSEL

8508 LOCH RAVEN BOULEVARD  
TOWSON, MARYLAND 21204-8304  
(301) 296-1620

July 2, 1985

TO : All Member Insurers of the Maryland Insurance Guaranty Association who, in the year 1984, wrote insurance in the following accounts: Automobile, Workers' Compensation, All Other

FROM : The Board of Directors of the Maryland Insurance Guaranty Association

SUBJECT : Assessment Due to the Insolvency and Liquidation of the Ideal Mutual Insurance Company

ENCLOSURE : Notice of Assessment (in Duplicate)

The Board of Directors of the Maryland Insurance Guaranty Association, in a Special Meeting held on May 15, 1985, unanimously voted an assessment of member companies in accordance with Article 98A, Section 508 (a) (3) of the Maryland Annotated Code, and Article II, Section C (3) of the Plan of Operation.

This assessment resulted from the insolvency of the Ideal Mutual Insurance Company and provides for the payment of covered claims presented to the Association.

Such assessment shall be applicable to the following accounts:

1. Motor Vehicle Insurance account at a percent of the net direct written premium during the calendar year 1984 to yield an amount not to exceed Five Million (\$5,000,000) Dollars.
2. Workers' Compensation account at a percent of the net direct written premium during the calendar year 1984 to yield an amount not to exceed Two Million (\$2,000,000) Dollars.

3. Account for All Other Insurance  
at a percent of the net direct  
written premium during the cal-  
endar year 1984 to yield an  
amount not to exceed Five Million  
(\$5,000,000) Dollars.

As set out in the Maryland Insurance Guaranty Association Plan of Operation, Article II, F, it is understood that the minimum assessment for any one member company shall not be less than \$10.00.

This assessment shall be due and payable within thirty (30) days from the date of the "Notice of Assessment".

You are requested to forward your company's check in the amount set forth in the enclosed "Notice of Assessment".

Make check payable to:

MARYLAND INSURANCE GUARANTY ASSOCIATION

Mail same to:

8508 Loch Raven Boulevard  
Towson, Maryland 21204

Please retain the original copy of the "Notice of Assessment" for your files and return the duplicate with your remittance to the Association's office on or before August 1, 1985.

Thank you for your cooperation.

BOARD OF DIRECTORS

Mr. Stephen J. Bernhardt  
Baltimore Equitable Society  
21 N. Eutaw Street  
Baltimore, Maryland 21201

Mr. Paul D. Horst  
Brethren Mutual Insurance Company  
149 N. Edgewood Drive  
Hagerstown, Maryland 21740

Page 3

James Keenan, Esquire  
Fidelity and Deposit Company  
210 N. Charles Street  
Baltimore, Maryland 21201

August Alegi, Esquire  
G.E.I.C.O.  
GEICO Plaza  
Washington, D.C. 20076

Mr. Keith Shoemaker  
U.S.F.&G.  
P. O. Box 1137  
Baltimore, Maryland 21203

Mr. Guy Johnson  
Amica Mutual Insurance Company  
400 E. Pratt Street - 7th Floor  
Baltimore, Maryland 21202

Mr. K. Donovan Waskom  
State Farm Mutual Automobile Ins. Co.  
800 Oak Street  
Frederick, Maryland 21701

Mr. Jack C. Miller  
Nationwide Insurance Company  
2500 Riva Road, S.E.  
Annapolis, Maryland 21401

## MARYLAND INSURANCE GUARANTY ASSOCIATION

JOSEPH R. PETR  
EXECUTIVE DIRECTOR  
AND COUNSEL

8508 LOCH RAVEN BOULEVARD  
TOWSON, MARYLAND 21204-6304  
(301) 296-1620

July 5, 1985

TO : All Member Insurers of the Maryland Insurance  
Guaranty Association who, in the year 1984,  
wrote insurance in the Surety account

FROM : The Board of Directors of the  
Maryland Insurance Guaranty Association

SUBJECT : Assessment Due to the Insolvency and Liquidation  
of the Eastern Indemnity Company of Maryland

ENCLOSURE: Notice of Assessment (in Duplicate)

The Board of Directors of the Maryland Insurance Guaranty Association, in a Special Meeting held on May 15, 1985, unanimously voted an assessment of member companies in accordance with Article 98A, Section 508 (a) (3) of the Maryland Annotated Code, and Article II, Section C (3) of the Plan of Operation.

This assessment resulted from the insolvency of the Eastern Indemnity Company of Maryland and provides for the payment of covered claims presented to the Association.

Such assessment shall be applicable to the following account:

1. Surety account at a percent of  
the net direct written premium  
during the calendar year 1984  
to yield an amount not to exceed  
Six Million (\$6,000,000) Dollars.

Additional yearly assessments on  
this account will be necessary  
since the net direct written  
premiums in 1984 do not yield  
the amounts necessary to pay all  
covered claims arising from the  
insolvency.

Page 2

As set out in the Maryland Insurance Guaranty Association Plan of Operation, Article II, F, it is understood that the minimum assessment for any one member company shall not be less than \$10.00.

This assessment shall be due and payable within thirty (30) days from the date of the "Notice of Assessment".

You are requested to forward your company's check in the amount set forth in the enclosed "Notice of Assessment".

Make check payable to:

MARYLAND INSURANCE GUARANTY ASSOCIATION

Mail same to:

8508 Loch Raven Boulevard  
Towson, Maryland 21204

Please retain the original copy of the "Notice of Assessment" for your files and return the duplicate with your remittance to the Association's office on or before August 4, 1985.

Thank you for your cooperation.

BOARD OF DIRECTORS

Mr. Stephen J. Bernhardt  
Baltimore Equitable Society  
21 N. Eutaw Street  
Baltimore, Maryland 21201

Mr. Paul D. Horst  
Brethren Mutual Insurance Company  
149 N. Edgewood Drive  
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Frederick, Maryland 21701

Mr. Jack C. Miller  
Nationwide Insurance Company  
2500 Riva Road, S.E.  
Annapolis, Maryland 21401



## COMBINED TOTALS

## MARYLAND INSURANCE GUARANTY ASSOCIATION

SEPTEMBER 30, 1985

BALANCE SHEETASSETS:

Cash in Bank	\$ 13,833
Investments	13,469,116
Inter-Acct.Rec.	232,035
<b>TOTAL ASSETS</b>	<b>\$13,714,984</b>

OPEN CLAIMS

1113 \$10,310,887

CLAIMS PAID

2799 \$2,692,040

LIABILITIES:

Inter-Acct.Pay	\$ 232,034
Unpaid Claims	14,560,887
Claims Adj. Exp.	2,428,784
Unearned Premium	95
<b>TOTAL</b>	<b>\$17,221,800</b>
<b>TOTAL EQUITY</b>	<b>(\$ 3,506,816)</b>
<b>TOTALS</b>	<b>\$13,714,984</b>

STATEMENT OF OPERATIONS  
INCEPTION TO 9/30/851/1/85 - 9/30/85CASH RECEIPTS:

Transfer M.V.S.F.	\$ 870,665
<u>Assessments:</u>	
A/C 1 Title	5,481
A/C 2 Surety	586,554
A/C 3 Oc.Marine&Trans.	70,943
A/C 4 Auto	5,617,384
A/C 5 Prop.&Casualty	6,688,601
A/C 6 Wk. Comp.	2,053,689
Minimum	7,097
Investment Income	1,244,077
Sub. Recoveries	2,644,812
Borrowed Money	69,956
Inter Acct. Distri.	81,198
<b>TOTAL CASH RECEIPTS</b>	<b>\$19,940,457</b>

\$	
	559,889
	5,009,634
	4,856,232
	2,003,686
	700
	157,669
	33,762
	17,000

\$12,638,572CASH DISBURSEMENTSSUB TOTALSSUB TOTALPersonnel Costs

Salaries	\$ 1,035,283
Med.Exp.&Life Ins.	68,627
Taxes (FICA&Unemp)	79,953

\$ 1,183,863

\$	75,885
	11,994
	7,659
	<u>\$ 95,538</u>

Office Expenses

Rent	253,796
Postage,Tel.&Tele.	51,594
Printing&Stationery	6,844
Office Supplies	62,165
Outside Services	122,600
Equip.&Leasehold Imp.	28,910

\$ 525,909

	20,826
	7,247
	803
	17,916
	23,923

\$ 70,715Other Expenses

Legal & Auditing	360,911
Audit Committee	4,227
Directors Exp.	55,815
Investment Exp.	10,507
Other Exp.	5,881
Interest	16,840

\$ 454,181

	45,316
	2,300
	2,421
	415

Miscellaneous Exp.

Claims Paid	2,692,040
Claims Adj. Exp.	1,216,230
Claims-Unearned Prem.	466,791
Admin.&Claims O/H Alloc	(15,254)

\$ 4,359,807

	16,825
	\$ 67,277
	119,097
	273,393

\$ 944,507\$392,490

TOTAL CASH DISBURSEMENTS \$ 7,468,267

\$ 626,020

RECEIPTS OVER DISBURSEMENT \$12,472,190

\$12,012,552



Syllabus.

[297 Md.]

THE A. S. ABELL PUBLISHING COMPANY v.  
ALBERT J. MEZZANOTE ET AL.

[No. 139, September Term, 1982.]

Decided September 12, 1983.

**PUBLIC INFORMATION — Freedom Of Information Act — The Public Information Act Provides That The Public Has The Right To Inspect The Public Records Of Any Branch Of The State Government — The Act Expressly States That Its Provisions Shall Be Broadly Construed With A View Toward Public Access — In Determining Whether A Statutorily-Established Entity Is An Agency Or Instrumentality Of The State Within The Scope Of The Act, The Language Must Be Liberally Construed In Favor Of Inclusion To Effectuate The Act's Broad Remedial Purpose.** Md. Code, Art. 76A, §§ 1A, 1 (b) And 2 (a). p. 32

**STATUTES — PUBLIC INFORMATION — Freedom Of Information Act — State Agency Or Instrumentality — There Is No Single Test For Determining Whether A Statutorily-Established Entity Is An Agency Or Instrumentality Of The State For A Particular Purpose — All Aspects Of The Interrelationship Between The State And The Entity Must Be Examined To Determine Its Status — Complete Control Over All Aspects Of An Entity's Operation Is Not A Determinative Factor.** Where the existence of the Maryland Insurance Guaranty Association (MIGA) depends upon the General Assembly; MIGA serves a public purpose; its management is selected by the State Insurance Commissioner, and is not self-perpetuating; it does not independently manage its affairs or enforce its regulations; its decisions may be reversed by the Commissioner; and it enjoys a special tax and liability status, the Court held that the Maryland Insurance Guaranty Association is an agency or instrumentality of the State within the scope of the Public Information Act. pp. 35, 37-39

**STATUTES — ATTORNEY GENERAL — COURTS — While An Opinion Of The Attorney General Is Entitled To Consideration In Determining Legislative Intent, It Is Not Binding Upon The Courts.** p. 40

**STATUTES — ATTORNEY'S FEES — COSTS — SOVEREIGN IMMUNITY — Ordinarily, A Specific Enactment Prevails Over An Incompatible General Enactment In The Same Or Another Statute.** The Court held that Art. 48A, § 517, granting immunity from liability to MIGA and its agents, prevails over Art. 76A, § 5 (b) (6), permitting attorney's fees and costs under the Public Information Act, and also prevails over Cts. & Jud. Proc. Art., § 7-104 (a) (1) and (2), permitting the assessment of appellate costs against a State agency. pp. 40-41

R. J. B.

26]

Opinion of the Court.

Appeal from the Circuit Court of Baltimore City (LEVIN, J.), pursuant to certiorari to the Court of Special Appeals.

The A. S. Abell Publishing Company filed suit against the Maryland Insurance Guaranty Association (MIGA) and its Chairman of the Board for access to certain records pursuant to the Public Information Act. From a judgment in favor of MIGA and its Chairman, A. S. Abell appealed to the Court of Special Appeals. The Court issued a writ of certiorari before consideration by that Court.

Judgment of the Circuit Court of Baltimore City (now the Circuit Court for Baltimore City) reversed. Case remanded to the Circuit Court for Baltimore City for further proceedings in accordance with this opinion. Each party to pay own costs.

The cause was argued before SMITH, ELDRIDGE, COLE, DAVIDSON, RODOWSKY and COUCH, JJ., and W. ALBERT MENCHINE, Associate Judge of the Court of Special Appeals (retired), specially assigned.

*Douglas D. Connah, Jr.*, with whom were *Christopher J. Fritz*, *Elizabeth C. Honeywell* and *Venable, Baetjer and Howard* on the brief, for appellant.

*Lewis A. Noonberg*, with whom were *Thomas J. Gisriel* and *Piper & Marbury* on the brief, for appellees.

DAVIDSON, J., delivered the opinion of the Court.

This case presents the question whether the Maryland Insurance Guaranty Association (MIGA), established by Maryland Code (1957, 1979 Repl. Vol. & 1982 Cum. Supp.), Art. 48A, §§ 504-519, is an agency or instrumentality of the State of Maryland within the scope of Maryland Code (1957, 1980 Repl. Vol. & 1982 Cum. Supp.), Art. 76A, §§ 1-5A (Public Information Act), that requires public records to be open for public inspection. The relevant statutory provisions are

Md. Code, Art. 48A, § 504 (a), § 506; Md. Code, Art. 76A, § 1A, § 2 (a), and § 1 (b).

Article 48A, § 504 (a) provides in pertinent part:

"The purposes of this subtitle are to provide a mechanism for the prompt payment of covered claims under certain insurance policies and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer; to assist in the detection and prevention of insurer insolvencies; and to provide for the assessment of the cost of such payments and protection among insurers."

Article 48A, § 506 provides in pertinent part:

"There is created a nonprofit unincorporated legal entity to be known as the Maryland Insurance Guaranty Association. All insurers defined as member insurers in § 505 (e) <sup>(1)</sup> shall be and remain members of the Association as a condition of their authority to transact insurance in this State."

Article 76A, § 1A provides in pertinent part:

"[A]ll persons are entitled to information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To this end, *the provisions of this act shall be construed in every instance with the view toward public access*, unless an unwarranted invasion of the privacy of a person in interest would result therefrom, and the minimization of costs and time delays to persons requesting information."

1. Art. 48A, § 505 (e) provides in pertinent part:

"'Member insurer' means any insurer which (1) writes any kind of insurance to which this subtitle applies ... and (2) is licensed to transact insurance in this State."

Art. 48A, § 504 (b) provides in pertinent part:

"This subtitle shall apply to all kinds of direct insurance, except life insurance, health insurance, and annuities."

Article 76A, § 2 (a) provides in pertinent part:

"All public records shall be open for inspection by any person at reasonable times. . . ."

Article 76A, § 1 (b) provides in pertinent part:

"'Public records' when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map, drawing, or other written document, regardless of physical form or characteristics, and including all copies thereof, that have been made by any branch of the State government, including the legislative, judicial, and executive branches, by any branch of a political subdivision, and by *any agency or instrumentality of the State* or a political subdivision, or received by them in connection with the transaction of public business. The term 'public records' also includes the salaries of all employees of the State, of a political subdivision, and *any agency or instrumentality* thereof, both in the classified and nonclassified service." (Emphasis added.)

In a letter dated 24 February 1982, John H. Fairhall, a reporter for the Evening Sun, which is owned by the appellant, A. S. Abell Publishing Co. (publisher), asked the appellee, Albert J. Mezzanote, Chairman of the Board of Directors of MIGA (Chairman of the Board), for the right to inspect certain records <sup>2</sup> pursuant to the Public Information

2. The requested records, enumerated in the 24 February 1982 letter, were as follows:

"(a) MIGA budget and payroll data from the agency's inception, about 1971, to the present. These data should include a list of all employees, by name, with salary.

"(b) All correspondence and memoranda between MIGA and the state insurance division, 1975 to the present.

"(c) MIGA's selection of a claims adjusting firm and payments to that (or those) firms, since 1971. Included should be records related to the Free State adjusting company.

"(d) Companies and individuals hired by MIGA since 1971, including consultants and attorneys. MIGA payments to these persons and firms should be included."

Act. In a letter dated 8 March 1982, the request was denied because MIGA "is not an agency or instrumentality of the State," and because "some or all [of the requested records] contain confidential information."

On 22 March 1982, in the Circuit Court of Baltimore City (now the Circuit Court for Baltimore City), the publisher, pursuant to Art. 76A, § 5 (b) (1),<sup>3</sup> filed suit against the Chairman of the Board and MIGA. In an amended complaint, the publisher sought an "injunction and order for production of public records" and an award of reasonable attorney fees and costs pursuant to Art. 76A, § 5 (b) (6).<sup>4</sup>

On 8 July 1982, MIGA and the Chairman of the Board filed a motion for summary judgment in which they pointed out that Art. 76A, § 2 mandated access only to "public records," and § 1 (b) defined a public record as including a record made or received by "an agency or instrumentality of the State." They asserted that MIGA was a "private non-profit unincorporated legal entity," and that, although created for a public purpose, it was not sufficiently controlled by the State to be characterized as an agency or instrumentality of the State. They also argued that the characterization of MIGA as a private entity was supported by legislative history and administrative interpretation. They concluded that MIGA was therefore not subject to the Public

3. Art. 76A, § 5 (b) (1) provides in pertinent part:

"On complaint of any person denied the right to inspect any record covered by this article, the circuit court in the jurisdiction in which the complainant resides, or has his principal place of business, or in which the records are situated, has jurisdiction to enjoin the State, any county, municipality, or political subdivision, any agency, official or employee thereof, from withholding records and to order the production of any records improperly withheld from the complainant."

4. Art. 76A, § 5 (b) (6) provides in pertinent part:

"The court may assess against any defendant governmental entity or entities reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the court determines that the applicant has substantially prevailed."

Information Act and was not subject to an award of attorney fees and costs. MIGA additionally argued in the alternative that, even if it were subject to the Public Information Act, some of the records requested by the publisher would be exempt from disclosure, either under the terms of the Act, Art. 76A, § 3,<sup>5</sup> or because of the attorney/client privilege.

The publisher filed a motion for summary judgment in which it asserted that MIGA served a public purpose and was sufficiently subject to State control to be deemed an agency or instrumentality of the State. It concluded that MIGA was therefore subject to the Public Information Act and to an award of attorney fees and costs.

The trial court concluded that MIGA was not an agency or instrumentality of the State within the scope of the Public Information Act. In view of this conclusion, the trial court did not determine whether any of the requested records were exempt from disclosure under Art. 76A, § 3, or whether attorney fees and costs should be awarded under Art. 76A, § 5 (b) (6). On 21 July 1982, the trial court entered a final order that granted MIGA's motion for summary judgment and denied the publisher's motion for summary judgment. Costs were divided between the parties.

5. Some of the provisions of Art. 76A, § 3 that might be relevant include § 3 (a) (iv) and § 3 (b) (v).

§ 3 (a) (iv) provides in pertinent part:

"The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds . . .

...  
"(iv) Such public records are privileged or confidential by law."

§ 3 (b) (v) provides in pertinent part:

"The custodian may deny the right of inspection of the following records or appropriate portions thereof, unless otherwise provided by law, if disclosure to the applicant would be contrary to the public interest:

...  
"(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency."



The publisher appealed to the Court of Special Appeals. We issued a writ of certiorari before consideration by that Court. We shall reverse the judgment of the trial court.

The Public Information Act provides that the public is entitled to information regarding the affairs of government, Art. 76A, § 1A. To that end, the Public Information Act provides that the public has the right to inspect the public records of any branch of the State government, § 1 (b) & § 2 (a). Moreover, the Public Information Act expressly states that its provisions "shall be broadly construed in every instance with the view toward public access," § 1A. Thus, the provisions of the Public Information Act reflect the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government. Accordingly, in determining whether MIGA is an agency or instrumentality of the State within the scope of the Public Information Act, the language of § 1 (b) must be liberally construed in favor of inclusion in order to effectuate the Public Information Act's broad remedial purpose. *See Keesling v. State*, 288 Md. 579, 589, 420 A.2d 261, 266 (1980); *James v. Prince George's County*, 288 Md. 315, 335, 418 A.2d 1173, 1184 (1980).

MIGA was established in 1971 by the General Assembly, 1971 Md. Laws, ch. 703. Its purpose is to protect the public by avoiding financial loss to policyholders and claimants resulting from the insolvency of insurers and by preventing insurer insolvencies, Art. 48A, § 504 (a). MIGA is designated as a "nonprofit unincorporated legal entity," § 506, and all insurers providing insurance other than life insurance, health insurance, and annuities are required to be members of MIGA as a condition of their authority to operate in Maryland, § 504 (b). MIGA is required to exercise its powers through a Board of Directors (Board) serving fixed terms. Directors are appointed by the State Insurance Commissioner of Maryland (Commissioner) who also fills vacancies. The Chairman of the Board, however, is elected from the Board by its members, § 506 & § 507 (a). The Board is authorized to delegate certain of its powers and

duties subject to approval by the Commissioner, § 509 (d).

MIGA is vested with broad authority. It is required to pay claimants on covered claims against an insolvent insurer, Art. 48A, § 508 (a) (1), (2), & (4); to allocate claims paid and expenses incurred subsequent to an insolvency and to assess its member insurers accordingly, § 508 (a) (3); and to designate member insurers as "servicing facilities" for the handling of claims subject to the approval and right of removal by the Commissioner, § 508 (a) (6) & § 510 (b) (3).

Additionally, MIGA is authorized to hire or retain employees to handle claims, Art. 48A, § 508 (b) (1). MIGA is also authorized to borrow funds, § 508 (b) (2); sue or be sued, § 508 (b) (3); enter into contracts, § 508 (b) (4); and to perform other acts necessary to effectuate its purposes, § 508 (b) (5).

MIGA is funded from assessments paid by its members, Art. 48A, § 508 (a) (3). It is exempt from all State and local taxes, except for property taxes, § 515, and from liability from any action taken in the performance of its powers and duties, § 517.<sup>6</sup>

The Commissioner also is vested with broad authority with respect to MIGA's operation. In addition to the authority to appoint the Board of Directors, to approve the delegation of the Board's powers, and to approve or revoke the designation of a member insurer as a "servicing facility," the Commissioner has the authority, and indeed is required, not only to approve all plans of operation and amendments submitted by the Board, but also under certain circumstances, to promulgate necessary rules. More particularly, MIGA is required to perform its functions under a plan of operation (plan) consisting of rules and regulations that establish the procedures to be followed by MIGA when exercising its

6. Art. 48A, § 517 provides:

"There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the Association or its agents or employees, the board of directors, or the Commissioner or his representatives for any action taken by them in the performance of their powers and duties under this subtitle."

powers or performing its duties. The plan and any necessary or suitable amendments must be submitted to the Commissioner by the Board and become effective upon approval by the Commissioner, Art. 48A, § 509 (a) (1). If at any time the Board fails to submit suitable amendments, the Commissioner is required to adopt reasonable rules that continue in force until modified by the Commissioner or superseded by a plan submitted by the Board and approved by the Commissioner, § 509 (a) (2). Upon approval, all member insurers are required to comply with the plan, § 509 (b).

The Commissioner has the authority to entertain an appeal by any member insurer aggrieved by a final action of MIGA, Art. 48A, § 509 (c) (7). Additionally, the Commissioner is authorized to revoke a member insurer's authority to operate in Maryland if the member insurer fails to pay an assessment or fails to comply with the plan of operation, § 510 (b) (2). Finally, MIGA is subject to examination and regulation by the Commissioner. Indeed, its Board is expressly required to submit an annual financial report to the Commissioner, § 514.

The central issue in this case concerns the test to be applied in determining whether MIGA is an agency or instrumentality of the State within the scope of the Public Information Act. MIGA maintains that "the true test of whether an entity is a State instrumentality is whether that entity is under the complete control of the State." It concludes that because the State does not exercise control over all aspects of MIGA's operation, MIGA is not an agency or instrumentality of the State. In response, while the publisher concedes that "State control is indicative of an organization's governmental status," it contends that it is not necessary for the State to have control over all aspects of the organization's operation in order to be characterized as a State agency or instrumentality. It asserts that the State exercises a sufficient degree of control over MIGA to characterize MIGA as an agency or instrumentality of the State within the scope of the Public Information Act.

This Court has repeatedly recognized that there is no single test for determining whether a statutorily-established entity is an agency or instrumentality of the State for a particular purpose. All aspects of the interrelationship between the State and the statutorily-established entity must be examined in order to determine its status. *Katz v. Washington Suburban Sanitary Comm'n*, 284 Md. 503, 510, 397 A.2d 1027, 1031 (1979) (sovereign immunity); *O & B, Inc. v. Maryland-National Capital Park & Planning Comm'n*, 279 Md. 459, 462, 369 A.2d 553, 555 (1977) (sovereign immunity); see, e.g., *Board of Trustees of Howard Community College v. John K. Ruff, Inc.*, 278 Md. 580, 587, 366 A.2d 360, 364 (1976) (sovereign immunity); *University of Maryland v. Murray*, 169 Md. 478, 481, 182 A. 590, 592 (1936) (equal protection). In each of these cited cases, this Court held that a statutorily-established entity was an agency or instrumentality of the State, notwithstanding the fact that the State did not exercise control over all aspects of the entity's operation. These cases demonstrate that complete control — control over all aspects of an entity's operation — is not a determinative factor in characterizing a statutorily-established entity as an agency or instrumentality of the State. Rather, a number of factors, including the degree of control by the State over the entity, must be taken into account.

Moreover, this Court has previously rejected the contention that the sole test to be applied in characterizing a statutorily-established entity as an agency or instrumentality of a government is whether the entity is subject to its complete control. In *Moberly v. Ilterboldsheimer*, 276 Md. 211, 345 A.2d 855 (1977), this Court considered whether a statutorily-established entity, a corporation known as the Board of Governors of the Memorial Hospital of Cumberland (Hospital), was a private corporation or an agency of the City of Cumberland (City) within the scope of the Public Information Act.<sup>7</sup>

7. At the time this Court considered *Moberly*, Md. Code (1957, 1975 Repl. Vol.), Art. 76A, § 1 (a) provided in pertinent part:

In *Moberly*, the record showed that the Hospital was established by the General Assembly, 1927 Md.Laws, ch.411. That Act authorized the Mayor and City Council of Cumberland to spend bond proceeds for the purpose of taking title to land and erecting the Hospital. Section 6 of the Act created a Board of Governors consisting of seven members, including the Mayor of the City and the President of the Board of Commissioners of Allegany County, both of whom were ex-officio members. As to the remaining general members, the Board was self-perpetuating in that it was authorized to fill its own vacancies. The Board was empowered to select the land for the Hospital, title to which was to be in the name of the Mayor and City Council of Cumberland, and it was to select plans for the building and enter into contracts for the erection and equipping thereof. Under § 9 of the Act, the Board was given the power to make rules and regulations for the operation and maintenance of the Hospital. The Board was empowered under § 10 to regulate charges and salaries, as well as to hire employees. Section 11 of the Act authorized, but did not require, the Mayor and City Council to appropriate amounts necessary to cover deficits in operation and maintenance of the Hospital. Section 13 provided that the City and the Board of Governors would be exempt from tort liability for the negligent operation of the Hospital.

By 1929 Maryland Laws, chapter 515, the provisions of the original Act were amended. The Board was "made and

"The term 'public records' when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing, or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made by the State and any counties, municipalities and political subdivisions thereof and by any agencies of the State, counties, municipalities, and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law. The term 'public records' also includes the salaries of all State employees, both in the classified and nonclassified service, and all county and municipal employees, whether in a classified or nonclassified service." (Emphasis added.)

That section was amended to its present form by 1978 Md.Laws, ch. 1006, effective 1 July 1978, and recodified as Art. 76A, § 1 (b).

constituted a body politic and corporate," given perpetual succession, and the capacity to sue and be sued. In addition, the Board was granted all powers necessary and proper to operate and manage the Hospital "as fully as if incorporated for such purposes under the provisions of the Public General Laws of Maryland."

In *Moberly*, it was expressly contended that the Hospital was not an agency of the City because the City did not exercise complete control over the Hospital's operation. There, it was pointed out that the Board was self-perpetuating so that its actions could not be effectively controlled by the City; that it was authorized to manage its own internal affairs, independent of governmental control, and was entirely separate from and independent of the City in its corporate acts and control; that no obligation existed between the Hospital and the City to discharge a municipal function; that the income of the Hospital was derived from patient fees, State appropriations, and bequests and not from the City; that the City did not include the Hospital in its budget; and that the City was powerless to change a decision made by the Hospital Board.

In determining whether the Hospital was an agency of the City within the scope of the Public Information Act, this Court did not regard the City's lack of complete control over the Hospital's operation as dispositive. Rather, it took into account all aspects of the interrelationship between the City and the Hospital, including the Hospital's public purpose, the degree of control exercised by the City, and the Hospital's immunity from tort liability. The Court there held that, although the City did not exercise complete control over the Hospital's operation, the Hospital was nonetheless an agency of the City.

Applying these principles here produces a clear result. The record shows that MIGA was established by the General Assembly so that its existence is subject to legislative control. It was established for a public purpose and has the obligation to protect claimants, policyholders, and indeed the public, by preventing member insurer insolvency and



paying claimants on covered claims against an insolvent member insurer.

MIGA can be effectively controlled by the State because its Board is not self-perpetuating. Although the Directors serve fixed terms and the Chairman of the Board is elected by its members, the Commissioner appoints the Directors and fills vacancies. MIGA is not authorized to manage its affairs independent of governmental control. Its plan of operation, consisting of various rules and regulations establishing all of its procedures, is subject to approval and amendment by the Commissioner; the delegation of certain powers by the Board is subject to approval by the Commissioner; its designation of a member insurer as a "servicing facility" is subject to approval and revocation by the Commissioner; and it is expressly subject to examination and regulation by the Commissioner to whom its Board is required to submit an annual report. Moreover, the Commissioner has power to change a decision made by the Board as a result of the authority to entertain appeals from the Board's final actions. Additionally, MIGA has no authority to enforce its regulations. Although all insurers are required to be members, it is the Commissioner, not the Board, who is authorized to revoke a member insurer's authority to operate if it fails to pay an assessment or comply with the plan. Finally, the General Assembly afforded MIGA special status by exempting it from State and local taxes other than property taxes, and from liability for actions taken in the performance of its duties.

In sum, MIGA's existence depends upon the General Assembly; it serves a public purpose, its management is selected by the Commissioner, and is not self-perpetuating; it does not independently manage its affairs or enforce its regulations; its decisions may be reversed by the Commissioner; and it enjoys a special tax and liability status. We recognize that the State does not exercise control over all aspects of MIGA's operation. Nevertheless, the degree of control exercised by the State over MIGA's operation exceeds the degree of control exercised by the City over the

Hospital's operation in *Moberly*. After examining all aspects of the interrelationship between the State and MIGA, including the degree of control exercised by the State over MIGA's operation, we are persuaded that MIGA is an agency or instrumentality of the State within the scope of the Public Information Act. Such an interpretation is consonant with the statutory mandate that the Public Information Act be liberally construed in order to effectuate its broad remedial purpose.

In reaching this result, we have considered the remaining contentions and find them to be without merit. More particularly, we recognize that the General Assembly has not expressly characterized MIGA as an agency or instrumentality of the State. We note that on some occasions, the General Assembly has expressly characterized certain entities that it has established as State "agenc[ies]," e.g., Md. Code (1957, 1979 Repl. Vol.), Art. 101, § 71 (a) (commissioners of the State Accident Fund), or "instrumentalit[ies]," e.g., Md. Code (1978, 1982 Cum. Supp.) § 18-1303 (b) of the Education Article (Maryland Higher Education Supplemental Loan Authority). Other entities established by the General Assembly have been expressly characterized as "not a department, agency, or instrumentality of the State," e.g., Md. Code (1957, 1981 Repl. Vol., 1982 Cum. Supp.), Art. 10, § 45D (The Maryland Legal Services Corporation). In some cases, the General Assembly has not expressly stated whether an entity that it has established is or is not an agency or instrumentality of the State, e.g., Md. Code (1978 & 1982 Cum. Supp.) §§ 18-1001 — 18-1014 of the Education Article (Maryland Higher Education Loan Corporation). Whether such an entity is characterized as an agency or instrumentality of the State for a particular purpose depends upon the facts. *E.g.*, *Katz*, 284 Md. at 510, 397 A.2d at 1031 (sovereign immunity); *O & B, Inc.*, 279 Md. at 462, 369 A.2d at 555 (sovereign immunity); *see, e.g., Moberly*, 276 Md. at 225, 345 A.2d at 863 (Public Information Act). Manifestly, the absence of a legislative designation is not determinative of MIGA's status. Thus, there is nothing in the legislative history that supports a conclusion contrary to the one we reach here.

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Similarly, we recognize that in both an opinion of the Attorney General, 60 Op.Att'y Gen. 394, 402 n.3 (1975), and a letter signed by an Assistant Attorney General dated 2 February 1982, appearing in the record here, the view was expressed that MIGA was not an agency or instrumentality of the State. While an opinion of the Attorney General is entitled to consideration in determining legislative intent, it is not binding upon the courts. *Schmidt v. Beneficial Finance Co. of Frederick*, 285 Md. 148, 158, 400 A.2d 1124, 1129 (1979); *Mayor of Baltimore v. State*, 281 Md. 217, 228, 378 A.2d 1326, 1332 (1977). We do not find either of the expressed views with respect to MIGA's status to be persuasive because the only rationale offered was that the State did not exercise control over all aspects of MIGA's operation.

Having found nothing in the legislative history, the Attorney General's administrative interpretation, or any other contention that leads us to a result contrary to the one we reach here, we shall reverse the judgment of the trial court and remand the case to that court for further proceedings. On remand, the trial court shall determine whether any of the requested records are exempt from disclosure under Art. 76A, § 3.

Moreover, on remand, attorney fees and costs should not be awarded pursuant to Art. 76A, § 5 (b) (6). Ordinarily, a specific enactment prevails over an incompatible general enactment in the same or another statute. *Employment Sec. Admin. v. Browning-Ferris, Inc.*, 292 Md. 515, 526, 438 A.2d 1356, 1363 (1982); *Criminal Injuries Compensation Bd. v. Gould*, 273 Md. 486, 495, 332 A.2d 55, 61 (1975); *Maguire v. State*, 192 Md. 615, 623, 65 A.2d 299, 302 (1949); see *Montgomery County v. Lindsay*, 50 Md.App. 675, 678, 440 A.2d 411, 413 (1982). Additionally, Art. 48A, § 11 specifically provides that the provisions of Art. 48A shall prevail over other statutory provisions relating to insurance

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matters.<sup>8</sup> Accordingly, Art. 48A, § 517, granting immunity from liability to MIGA and its agents, prevails over Art. 76A, § 5 (b) (6), permitting the assessment of attorney fees and costs in cases under the Public Information Act. Similarly, Art. 48A, § 517 prevails over Md. Code (1974, 1980 Repl.Vol.) § 7-104 (a) (1) and (2) of the Courts and Judicial Proceedings Article, permitting the assessment of appellate costs against a State agency.<sup>9</sup> Under these circumstances, there shall be no allocation of appellate costs.

*Judgment of the Circuit Court of Baltimore City (now the Circuit Court for Baltimore City) reversed.*

*Case remanded to the Circuit Court for Baltimore City for further proceedings in accordance with this opinion.*

*Each party to pay own costs.*

8. Art. 48A, § 11 provides:

"Provisions of this article relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general."

9. § 7-104 of the Courts Article provides in pertinent part:

"(a) In general. — (1) Costs shall be allowed to or awarded against the State or one of its agencies or political subdivisions which is a party to an appeal from an executive, administrative, or judicial decision, in the same manner as costs are allowed to or awarded against a private litigant.

"(2) The State, its agency, or the political subdivision shall pay the costs awarded against it."

MARYLAND GENERAL ASSEMBLY  
DEPARTMENT OF FISCAL SERVICES

EXHIBIT F  
(Page 1 of 2)

FISCAL NOTE

SB 377

Senate Bill 377 (Senator Rasmussen) (Chairman, Committee on Finance)

Finance

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**SUMMARY OF LEGISLATION:** This emergency bill amends the Maryland Insurance Guaranty Association Act (MIGA) with respect to surety bonds in two major ways. First, it limits each covered claim of a surety bond to \$300,000, with a ceiling on MIGA's aggregate liability of \$1,000,000 under any one bond. In the event of covered claims in excess of \$1,000,000 under any one bond, MIGA is to make a prorated payment on account of each covered claim in the ratio that the covered claim bears to the total amount of all covered claims under the bond. MIGA is never obligated to pay more than the obligation of the insolvent insurer under the surety bond from which the claim arises.

Second, except as to surety bonds, MIGA's obligation for all other covered claims, within 30 days from the determination of insolvency, is capped at \$300,000 for each covered claim, after a deductible of \$100 (instead of \$50). MIGA is never obligated to pay more than the obligation of the insolvent insurer under the policy from which the claim arises. However, for a covered claim arising out of a workmen's compensation policy, MIGA must pay the full amount.

Third, the bill reduces the number of MIGA's separate insurance accounts from 6 to 4: (1) title insurance, (2) motor vehicle insurance, (3) workmen's compensation, and (4) all other insurance. The bill provides that any amounts in the surety insurance account and the wet marine and transportation account on July 1, 1985 is to be transferred to the account for all other insurance.

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**STATE FISCAL IMPACT STATEMENT:** No effect.

**LOCAL FISCAL IMPACT STATEMENT:** No effect.

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**STATE REVENUES:** No effect.

**STATE EXPENDITURES:** This bill has no effect on State expenditures, inasmuch as the Maryland Insurance Guaranty Association is responsible for the administration of assessments in the affected insurance account applicable to an insolvent insurer.

**MARYLAND INSURANCE GUARANTY ASSOCIATION (MIGA):** The maximum assessment that MIGA may make against premiums written in Maryland for an account under which an insolvent insurer falls is 2%.

The assessments are used to pay covered claims of an insolvent insurer. Surety bond insurance constitutes a relatively low premium base account. With the January 1985 insolvency of the Eastern Indemnity Company of Maryland, concern has been expressed about the years it will take to recoup funds to pay Eastern claimants if the 2% maximum assessment applies only to the surety account.

By merging the surety and the wet marine and transportation insurance accounts into the account for all other insurance, the premium base (as of December 31, 1984) for surety insurance would be increased from \$28,170,705 to \$722,826,262.

Thus, the estimated \$6 million in losses in Maryland could be paid off with a one-time assessment of .0083% (approximately 8/10ths of 1%).

INFORMATION SOURCE: DLR (Insurance Division) & DFS

ESTIMATE BY: DLR (Insurance Division) & DFS

Fiscal Note History: First Reader - January 28, 1986

Per: E. P. Sayre  
jml

Joseph M. Coble, Director  
Division of Fiscal Research